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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,831	12/28/2000	Ernest H. Roberts	RTS 2 0017	8674

23717            7590            06/27/2003

LAW OFFICES OF BRIAN S STEINBERGER  
101 BREVARD AVENUE  
COCOA, FL 32922

[REDACTED] EXAMINER

VARNER, STEVE M

ART UNIT	PAPER NUMBER
3635	

DATE MAILED: 06/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/750,831	ROBERTS, ERNEST H.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Steve M Varner	3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 28 December 2000.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 8,12-20 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-7, 9-11, 21, 25 is/are rejected.
- 7) Claim(s) 22-24 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a):
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
 a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. . | 6) <input type="checkbox"/> Other: _____ .                                   |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1, 6, 7, 9-11, 21, 25, are rejected under 35 U.S.C. 102(b) as being anticipated by Achen.

Regarding claim 1, Achen shows a sheet (30) having a sized portion, a utility wall plate (22) abutting a wall and covering a passageway through the wall, wherein the sized portion of the sheet (30) is adjacent to the utility wall plate (22), and an arthropod deterring component (24) is associated with the sheet.

Regarding claim 6, Achen shows an arthropod-deterring component (24) molded directly therein.

Regarding claim 7, Achen shows the arthropod-deterring component (24) applied therein.

Regarding claim 9, Achen shows the sheet (30) configured to circumscribe a passageway defined by an opening through the utility wall plate (22). (Fig. 3)

Regarding claim 10, Achen shows the sheet (30) configured to circumscribe a passageway defined by a space between the utility wall plate (22) and the wall to which it abuts. (Fig. 3)

Regarding claim 11, Achen shows the opposing ends of the sheet (30) are substantially equal in length. (Fig. 3)

Regarding claim 21, Achen shows a sheet having a sized portion (30). Achen shows a wall (10) having a passageway through the wall; the sized portion of the sheet (30) being placed across a portion of the passageway. Achen shows an arthropod deterring component (24) associated with the sheet (30). (Fig. 3)

Regarding claim 25, Achen shows a utility plate (22), the sheet (30) placed adjacent to one side of the utility plate (22). (Fig. 3)

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Achen.

Achen shows the basic claimed structure. Achen does not show the sheet molded, extruded, pliable, or stiff. It would have been an obvious design choice to make the sheet molded, extruded, pliable, or stiff since molding and extrusion are normal ways in which pliable and stiff sheets may be made.

***Claim Objections***

Claims 22-24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 22 is allowable for the pipe.

Claim 23-24 depend from claim 21 and are therefore allowable.

***Response to Arguments***

Applicant's arguments with respect to claims 1-7, 9-11, 21-25, have been considered but are moot in view of the new ground(s) of rejection.

Applicant argues that "arthropod deterring component" is clear.

Examiner agrees.

Applicant argues that Sharples is not available as prior art.

Examiner agrees.

Applicant argues that Manak is not relevant art.

Examiner has found more relevant art.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sharples presents a retractable electric wall outlet assembly. Manak shows a plastic tree band. Carman reveals a tree trunk barrier for pest control. Ritter shows a rodent exclusion device.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve M Varner whose telephone number is 703 308-1894. The examiner can normally be reached on M-F 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D Friedman can be reached on 703 308-08390839. The fax phone numbers for the organization where this application or proceeding is assigned are 703 305-7687 for regular communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1113.

SV  
June 23, 2003



Carl D. Friedman  
Supervisory Patent Examiner  
Group 3600